

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2349 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANKABHAI NAGINBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AS SUPEHIA for Petitioner

MR SP HASURKAR for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 23/07/98

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner seeks direction to set aside the order of removal dated 28.12.1994 and also the judgment of the Tribunal dated 27.8.1997 to reinstate the petitionere in service with all consequential benefits including the backwages. The petitioner was appointed as Hamal on 17.10.1979 in the Revenue Department of the State of

Gujarat and he worked untill 28.12.1994 when he was removed from service. He challenged the order of removal before the Gujarat Civil Services Tribunal, Gandhinagar by filing Appeal No.108/95. The said appeal has been dismissed by judgment dated 27.8.1997. Reason for the removal as appears from the impugned order is that the judgment dated 15.7.1993 of the J.M.F.C., Gandhinagar in Criminal Case No.1205/85, the petitioner is acquitted. However, in the other criminal case, he was convicted and sentenced to 3 days imprisonment and a fine of Rs.40/-.

2. It is contended by the learned Advocate for the petitioner that the impugned order is ex-facie illegal for the reason that it has been passed in violation of Rule 14 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1977, inasmuch as before the impugned order was passed, he was not afforded any opportunity of hearing. The learned Advocate has placed reliance on a decision of the Division Bench of this Court, reported in 23(2) GLR 1979. In the said judgment, the Court held thus:

"Mere conviction, therefore cannot be utilised for passing an order of dismissal blindfoldedly without hearing the delinquent on the question of sentence. Needless to add that this would be so even in case where the disciplinary authority exercises powers under Rule 14 of the Gujarat Civil Services (Discipline and Appeal) Rules."

Mr S P Hasurkar, learned Addl.Government Solicitor submits that Rule 18 is not attracted in the present case as the conviction is recorded on the basis of enquiry. This contention has been dealt with in detail in the aforesaid judgment of the Division Bench.

3. Following the decision of the Division Bench, the impugned order dated 28.12.1994 removing the petitioner from service is quashed and set aside. It will be open for the respondent to pass a fresh order after giving opportunity of hearing to the petitioner. The question of backwages and other benefits will be decided after the said decision is taken. The respondent authority shall take a decision within a period of two months from the date of receipt of the writ.

Rule made absolute to the aforesaid extent. No order as to costs.

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msp.